

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CHARLES C CLARK IV.
Plaintiff Below,
Appellant

VS

ERIC WASMUNDSKI
Defendant Below,
Appellee

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C.A. No. JP17-20-002114

TRIAL DE NOVO

Submitted: November 16, 2020
Decided: December 4, 2020

APPEARANCES:

Nicole M. Faries, Esquire, for the Plaintiff
The Defendant was self-represented.

Alan G. Davis, Chief Magistrate
Jennifer N. Sammons, Justice of the Peace
John C Martin, Senior Justice of the Peace

Martin for the Court

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP17-20-002114

CHARLES C CLARK IV VS ERIC WASMUNDSKI

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

On March 24, 2020 the plaintiff filed this action seeking to recover possession of a rented lot located at 28367 Nanticoke Avenue, Millsboro, Delaware for non-payment of rent and violations of the Rules and Regulations of the community known as Riverdale Park, where the lot is located. Following a series of hearings in accordance with the Court's COVID 19 protocol, on October 29, 2020 the Court below issued an Order of Dismissal Without Prejudice because it found that it did not have jurisdiction over the matter. The plaintiff filed a Motion for Reconsideration, which was denied. On November 2, 2020 the plaintiff filed a timely appeal of this judgment pursuant to 25 Delaware Code Section 5717. This is the decision of the Three Judge Panel hearing the appeal as a Trial De Novo.

HISTORY

On January 1, 2018 the parties entered into a rental agreement for the land only known as Lot #162 located in the Riverdale Park community at the street address shown above. The plaintiff was the Landlord and the defendant was the Tenant. The plaintiff testified that the home on the lot at this time had been moved there about 2016 and agreed that this home had been purchased by the defendant from its former owners. Section 2 (A) of the rental agreement stated that rent was payable on an annual basis on or before January 1 of each year. The annual rent was \$3,500.00 for the first two years of the lease and may have been adjusted after that according to a formula stated in the lease.

Section 2 (C) of the agreement also stated that "All rental payments shall be made on January 1st of each and every year. Landlord may at his option terminate this Rental Agreement if the full rental amount is not paid by January 31st of each year".

The plaintiff testified that he has been the owner of this Park for forty years. When the defendant did not pay his annual rent by January 31, 2020 the plaintiff exercised his option to terminate the defendant's lease. Section 3 of the defendant's lease explained Permitted Improvements to the leased lot and Section 4 addressed the Rules and Regulations of the community. The plaintiff testified that the defendant was in violation of Section 3 of the lease by placing tents on the leased lot which were used by unknown people as sleeping quarters. He personally observed people sleeping in the tents as late as 3:00 to 4:00 AM and required them to leave the property. The defendant also encroached on a vacant lot next to his by storing lumber and other materials there, which is also a violation of his lease. On January 27, 2020 the plaintiff sent the defendant a Notice Of Immediate Termination of his lease because of these violations.

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When the defendant did not pay the annual rent by January 31, 2020 this action was filed on March 24, 2020. At the time of the filing, the plaintiff claimed that the defendant owed the plaintiff rent of \$3,575.00 for rent and a penalty and a letter of lease termination had been sent to him because of this.

On April 9, 2020 the plaintiff's counsel sent a letter to the defendant acknowledging receipt from the defendant of a rent payment of \$3,368.00 on April 7, 2020 but the plaintiff reserved his right to terminate the lease agreement. . As of the time of the Three Judge Panel trial, the plaintiff stated he is not pursuing any claim for monetary damages. The plaintiff also testified that he has tried his best to work with the defendant about the violations of his lease and the Park's regulations without success. He said that he could not have a "rational conversation" with the defendant about these issues.

The defendant testified that he misunderstood the language of the lease regarding the time period within which his annual rent had to be paid to avoid the possibility of a lease termination. He said that he has never lived on the property and wants to move out. He denied that any of the tents that were erected on his lot were used for people to live in.

Two witnesses for the defendant testified that no one ever lived in the tents that were erected on the defendant's lot. One witness said that she had no idea where the defendant's property lines were actually located because there were no markings to show this.

DISCUSSION

Delaware Code Title10 Section 9301 states that "Unless otherwise specified by law, the Justice of the Peace Court shall have civil jurisdiction over the following: (1) Common-law actions in contract, express or implied, (emphasis added) and common-law actions in tort for damage, destruction or taking of personal property (including replevin), for injury to real property, and for trespass on the land." Jurisdiction is limited to actions where the matter in demand is less than \$15,000.00.

The Panel finds that this matter is an action in contract and that this Court has jurisdiction to hear the case as authorized by the statute cited above.

This action was filed on two different types of violations of the parties' lease agreement. The first was non-payment of rent in a timely manner as specified in Section 2 (C) of the lease as quoted above. When the defendant did not pay his rent within the period allowed by this section, the plaintiff exercised his clear right to terminate the lease. The Panel finds that the defendant's defense of not understanding this provision of the lease simply is unbelievable. With this finding, the Court has no need to address the second basis of lease termination offered by the plaintiff.

Since the plaintiff has met its burden of proof by a preponderance of the evidence, the Panel will order the issuance of a Writ of Possession, which will require the defendant to vacate the land identified in this action and will terminate the parties' relationship as Landlord and Tenant.

The Panel notes that Section 14 (B) of the lease gives the defendant thirty days after the termination of the lease to remove all "surface improvements" from the lot at his expense. This paragraph also describes the process to be followed and the outcomes that can follow if this is not done.

ORDER

After considering all the evidence presented, the Panel enters judgment on behalf of the plaintiff and against the defendant. No monetary damages were sought in this case. The plaintiff is awarded possession of the rented lot in question which will be enforced by a Writ of Possession executed by a State Constable.

IT IS SO ORDERED 04th day of December, 2020



Justice of the Peace/John C. Martin



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).